

## MILWAUKIE AND ROCK RIVER CANAL LANDS.

MAY 10, 1842.

Read, and laid upon the table.

Mr. HOWARD, from the Committee on the Public Lands, submitted the following

### REPORT :

*The Committee on the Public Lands, to whom were referred the memorial of the Council and House of Representatives of the Territory of Wisconsin, and also a remonstrance of the "Milwaukie and Rock River Canal Company," on the subject of the grant of lands heretofore made to aid in the construction of said canal, beg leave to report :*

The importance of the subject referred to them, the proper presentation of the question involved, and the rights and interests of the parties concerned, have induced them to make a careful examination of the several statutes relating to the construction of this canal; and, in order to show clearly the grounds upon which they have come to a conclusion adverse to the objects aimed at by the memorialists, they will give a brief history of the legislative action upon the subject.

By an act approved the 5th January, 1838, the Territorial Legislature created a private corporation, by the name and style of the "Milwaukie and Rock River Canal Company," conferring upon all such persons as should become stockholders in said company the customary powers, rights, privileges, and franchises, possessed by such corporation, and authorizing it "to construct, maintain, and continue a navigable canal or slack-water communication, from the town of Milwaukie to Rock river, on such route and of such dimensions, and to terminate at such point as should be determined on by such corporation."

The capital stock was to be \$100,000, but might be increased to a sum not exceeding \$1,000,000, "under the direction of the directors of the said corporation."

The act also required the corporation to commence the work in three years from the time of its passage, in default whereof the privileges granted by the charter were declared to be forfeited. It also authorizes the company to erect toll-houses, and collect such tolls as should, from time to time, be prescribed by the Territorial or the State Legislature, and to borrow any sum of money which might, in their discretion, be necessary for the prosecution of the work.

It expressly declares (sec. 23) "That the future State of Wisconsin, at any time after its admission into the Union, shall have the right to purchase and hold, for the use of the State, the canal herein authorized to be

constructed, by paying to the said corporation the amount actually expended in the construction and repairs of the same, together with interest not exceeding seven per cent.: *Provided, however,* That in case the Congress of the United States shall make any donation, either in land or money, in aid of the construction of the work by this act authorized, the right to the same shall vest in said State whenever the said transfer of the canal shall be made; and the nett proceeds of all sales of land, and the amount of all money so appropriated or donated, shall be deducted from the amount to be paid to the said corporation for the transfer of said works to the State. And the said corporation is hereby authorized to apply to Congress for such an appropriation, in money or lands, to aid in the construction of the works authorized by this act, as Congress in its wisdom shall see proper to grant."

This reservation to the *State* of Wisconsin to purchase out the rights of the company constitutes the only limitation to the duration of the privileges granted by the charter; and, until their rights are thus extinguished, it is plain that the legislative authority cannot divest the company of the rights thus granted.

In pursuance of this charter, a company was formed and organized, and in the spring of 1838 the president and directors presented to Congress a respectful and able memorial, praying that a grant of land might be made, for the benefit of this canal, similar to sundry grants of land heretofore made to aid the States of Ohio, Indiana, and Illinois, in the construction of canals in those States.

This application was favorably considered by Congress, and on the 18th of June, 1838, an act was approved, which "granted to the Territory of Wisconsin, for the purpose of aiding in opening a canal to unite the waters of Lake Michigan, at Milwaukee, with those of Rock river, between the point of intersection with said river of the line dividing townships 7 and 8 and the Lake Koshkonong, all the land heretofore not otherwise appropriated or disposed of in those sections and fractional sections, which are numbered with *odd* numbers on the plats of the public surveys, within the breadth of five full sections, taken in north and south or east and west tiers, on each side of the main route of said canal, from one end thereof to the other, and reserving the *even*-numbered sections to the United States;" and declaring that "the land so granted, to aid in the construction of said canal, shall be subject to the disposal of the Legislature of the Territory, for the purpose aforesaid, and for no other." The act then proceeds to direct that, "as soon as the main route of the canal should be definitely located and established, agreeably to the act of the Legislature of said Territory, incorporating the *Milwaukee and Rock River Canal Company*," the Governor of the Territory should transmit a plat of the route to the Commissioner of the General Land Office, who was required to ascertain the particular lands granted, and transmit a list of the same to the Governor, who, or some other person duly authorized by the Territorial Legislature, or State Legislature after the admission of the State into the Union, was empowered to "sell the whole or any part of the lands so granted, at a price not less than \$2 50 an acre, and to give title in fee simple therefor."

The remaining or *even* sections reserved to the United States were exempted from the pre-emption right, and were not to be sold at less than \$2 50 per acre; and in case the sum of \$2 50 per acre could not be obtained for the *odd* sections within five years from the first sale attempted to be made, the Territorial or State Legislature was authorized to reduce their minimum price.

The act also expressly gives the assent of Congress to the charter granted by the Territorial Legislature to the Milwaukie and Rock River Canal Company, subject to the following modifications :

1st. "That, whenever the Territory of Wiskonsan shall be admitted into the Union as a State, the lands hereby granted for the construction of the said canal, or such parts thereof as may not have been already sold and applied to that object, under the direction of the Territorial Government, shall vest in the State of Wiskonsan, to be disposed of under such regulations as the Legislature thereof shall provide ; the proceeds of sales to be applied to the construction of said canal, or of such parts thereof as may not have been completed ; and the *State* of Wiskonsan shall be entitled to hold, in virtue of the grant hereby made, as many shares of the stock of the said canal as shall be equivalent to the aggregate of all the sums of money arising from the nett proceeds of the sales of the said lands, and applied to the construction of the canal, any thing in the charter of the Milwaukie and Rock River Canal Company notwithstanding, and shall be entitled to the same dividends on said stock as any other stockholder ; and, in the event that the said State shall make no other adequate provision for purchasing out the residue of the stock of the said canal, the dividends of the State stock hereby acquired, and all other proceeds of the sales of the lands hereby granted, shall constitute a fund, and be applied to the extinguishment of the claims of all other stockholders, until the entire stock vested in the canal shall have been acquired by the State ;" and,

2d. "That in estimating the principal sum and interest to be paid by the said *Territory*, or the future State of Wiskonsan, to the stockholders of said canal, a credit shall be given to the Territory or State, for all dividends received by said stockholders prior to the extinguishment of their interest in the said canal, in the mode provided for in the 23d section of said act of incorporation."

It is to be observed, that neither the charter, nor the act of Congress approving it, gives to the *Territory* any power to purchase out the corporate rights of the company without its consent. That power is plainly reserved to the *State* of Wiskonsan, when it shall be admitted into the Union ; but, until that contingency shall happen, the local Legislature can exercise no control whatever over the company, except in prescribing the *tolls* which they may collect—a reservation of power sufficient to guard the public against any abuse or exaction arising from the private interests of the stockholders. It would, perhaps, be competent for the Territory, under the last-recited clause of the act of Congress, to enter into a contract with the company for the purchase of their franchises ; but the language of that clause does not, in the opinion of the committee, warrant the inference that the Territory, as such, may, upon its own terms, and against the will of the company, demand a surrender of their chartered rights. Nor is the Territory invested with the rights of a stockholder in the company. It is not authorized to be represented in the board of directors, nor to acquire any pecuniary interest whatever in the property of the company without their consent. This authority is expressly reserved, by the charter and by the act of Congress, to the "State of Wiskonsan," a party not yet in existence. And it is clear, both from the charter and the act approving it, that the grant of land was to enure to the benefit of the company, for the specific purpose of "aiding in the construction of the canal." In creating this fund, Congress thought proper to intrust its management and application, in the first instance, to the Territory, and afterwards to the State, granting to the

latter far more ample powers than to the former, but still making it imperative upon the trustee to apply it to that object, and to no other.

In pursuance of the above-mentioned act of Congress, and the charter of the company, the route of the canal was laid out, being about 52 miles in length, the requisite plats prepared, and the *odd* sections designated. The number of acres embraced in the grant is about 150,000, of which the Territory has sold 42,447 acres to settlers, on a liberal credit; and being authorized by the act to borrow money on a pledge of the lands granted, the Territory has exercised that authority also, but to what extent does not appear. The amount which it has actually applied to the work is, according to the memorial before the committee, \$14,604 50. The stockholders also have expended considerable sums in the prosecution of the work, and have defrayed all the incidental expenses of the undertaking.

The Legislature of the Territory now complain that all hopes of the construction of the canal are abandoned by its friends; that it is seen to be a work far beyond the resources of the canal company or of the Territory; that the "so called" grant has been imposed upon the Territory *without her consent*, and has greatly retarded the settlement of a large region of the finest country; has imposed upon the early settlers of that region an intolerable burden, and become the fruitful source of political strife and vexatious legislation; and conclude by a series of resolutions, asking that all connexion of the Territory with the company may be dissolved, the work abandoned, the office of trustee abrogated, so far as the Territory is concerned, and requesting Congress to *repeal* so much of the act of the 5th June, 1838, as directs the application of the funds and prescribes the conditions of the grant; and that the same lands may be ceded to the Territory or State of Wisconsin, for purposes of internal improvement, to be designated by the Territory, subject to the approval of Congress—the lands to be sold by the Territory at not less than \$1 25 per acre. Or, should Congress decline this arrangement, they are requested to repeal the act of cession unconditionally, and to sell all the lands not disposed of by the Territory, upon the usual terms, and to discharge all purchasers under the Territory, who are still indebted for their lands, upon their paying for them, at the proper land office, at the rate of \$1 25 per acre. They also request Congress to provide for a repayment of the excess price paid by the purchasers of the even-numbered sections which have been sold at \$2 50 per acre.

Against this proposed repeal and revocation of the grant, the company earnestly remonstrate. They state that it was through their exertions alone, and at their expense, that the benefits of the grant were secured to the Territory; that the latter has incurred no debt or risk in respect to the work; that they themselves were induced, by the authority given them in their charter, to incur this expense, not for any direct advantage which would accrue to the company from the grant itself, but from the advantage which they would derive from that source in the accomplishment of the work, for which they had not otherwise adequate means; and that it was under the faith of the act of Congress making the grant that they unhesitatingly invested their means in the work. The committee append a copy of the memorial and of the remonstrance.

The committee do not conceive that the expediency of the undertaking contemplated in the charter is a question into the merits of which they are called upon to inquire. They presume that Congress and the Territorial Legislature acted upon good and sufficient reasons in authorizing it. If the



work be, in truth, of that hopeless and unprofitable character given it by the present memorial, it is perhaps not assuming too much to say that the private stockholders will be among the first to make the discovery, and to act according to the dictates of prudence.

Nor can the committee conceive upon what grounds the memorialists allege that this "so called grant was imposed upon the Territory without her consent." The Territorial act creating the corporation expressly authorized the company to apply to Congress for such an appropriation in land, to aid in the construction of the canal, as Congress in its wisdom should see proper to grant. Upon the application thus authorized, Congress made the grant, and created the Territory a trustee for the administration of the fund supplied by it. This trust was accepted by the Legislature of the Territory, who, by their act of February 26th, 1839, duly approved by the executive branch of their Government, provided for the sale of these lands, appointed a board of commissioners to superintend the sales, and authorized the Governor of the Territory to issue patents to the purchasers, (Territorial Laws 1838-'39, p. 29;) and this act was passed even *before* the Governor of the Territory had received from the General Land Office notice of the designation of the particular lands granted. The committee conceive that this ground of complaint is not only impossible in itself, but that all color or pretence for it is negatived by the public acts of the Territory.

A more important question arises. The company have refused their assent to this proposition of the Territorial Legislature; and the inquiry presents itself, whether, without that assent, the Federal Government can rightfully exercise the supposed power of repealing the act of cession. From the recitals made above from the charter, and from the act of June 18, it is manifest that the company have an interest in the proceeds of the lands. They constitute an estate in trust, the use of which is to be enjoyed by the company, under its charter. The Territory, as a party, can assert no beneficial or pecuniary interest in the fund: its character is entirely fiduciary, and its rightful action can only be in subordination to the objects authorized by the charter. The grant was made for the sole purpose of aiding the company in opening the canal. To this aid, to this pecuniary benefit, they have an undoubted right. If the trustee discharge the duties which it has voluntarily assumed, if it proceed to sell the lands and expend the proceeds, conjointly with the funds of the company, in completing the work, as it is bound to do, it adds greatly to the profits of the company, who are plainly entitled to receive the accruing dividends; and it is the right to the employment of this fund in prosecuting this public improvement, and making it valuable to them—a private, pecuniary right, springing from an executed contract by the United States—that, in the opinion of the committee, erects an insuperable barrier to the repeal of the law without the consent of the company. The present case differs from any other which has come to the notice of the committee, where Congress has made grants of land to aid in opening roads and canals. The grants made to the States of Ohio, Indiana, and Illinois, for those objects, were directly to the State, and for the use and benefit of the State, and of no other party. The use of the fund was a *public* use, and the profits pertained to no particular individual. And yet the doctrine, that Congress might, at will, resume these grants, or evict the tenants entering under the State authority, or exercise any acts of ownership over the ceded lands, was, it is believed, never urged or thought of by any intelligent person. The grant in the present case, though not

directly to, is for the benefit of, private persons. It is complete, and, like other grants, amounts to an extinguishment of the title of the grantor, and implies a contract not to reassert it. It stands as an estoppel against any claim by the United States to withdraw its benefits from the company. As long as that company is in legal existence, its right to the use of this fund, subject to its charter and to the terms of the cession, must endure. The Government is not exempt from the obligation of good faith, and it is bound to see that its contracts are made effectual. It may, indeed, be true that, in case the Territory shall refuse to execute this trust, the company will be without a remedy before any judicial tribunal. But this cannot impair their rights; and Congress might undoubtedly remedy the defect whenever the case should arise. The committee cannot, however, for a moment doubt the good faith of the Territory in the performance of this trust. From what they can learn, they are persuaded that the construction of this canal will be of great advantage to that young and enterprising community. It is believed, also, that not only the agricultural and mineral interests of Wisconsin and Illinois, but the commercial interests of all the States bordering upon the lakes, will be essentially advanced by it. But however this may be, the committee cannot suffer themselves to believe that the Legislature of the Territory would deem any temporary, local, and uncertain advantage which may be supposed to flow from a revocation of this trust a counterpoise to the evils resulting from an example so indicative of bad faith on the part of the Government. Such an act might possibly leave the company without remedy by ordinary process of law; but it could not strip them of their rights under the grant. The principles of justice endure, though the forms of positive law may be changed; and the obligation of contracts remain, even though there be no known means to compel its observance. Governments enter into solemn compacts with each other, and with private individuals, though the high functions with which society has clothed them, involving the security, the prosperity, and the preservation of society itself, do not allow of their being required to answer for supposed delinquencies at any judicial tribunal; yet this exemption has never been construed as implying an absence of obligation in their contracts, or any power to infringe or impair the vested rights of those with whom the engagement was contracted. Such a principle is justly abhorrent to the moral feelings of men, and, if practised by Governments, justly exposes them to the condemnation and scorn of the world. If the sacredness of contracts may be disregarded by the highest power in the State, there remains to society no sufficient guarantee for its continuance; and the citizen, despising as an idle mockery the forms of protection, must soon resort to the right of the strongest, as the only means of acquisition and of safety. Because the contract was entered into by Government, it does not the less imply a right and a corresponding obligation; and though there may be no direct and available remedy for a breach of the obligation, yet public law, the universal moral sentiment of mankind, imposes the obligation, and demands that the engagement be kept.

It has been urged that the Territory is constituted a stockholder in the capital stock of the company; and the inference is sought to be drawn, that it may refuse to contribute its quota to the prosecution of the work. Neither the fact nor the inference can be admitted. There is not, as the committee have already remarked, any provision in the act of Congress or in the charter authorizing the Territory to become a stockholder; and even if it

were, it could not, without express law, interpose its power to extinguish the privileges of the company, or divest them of the benefits arising from the use of the trust fund. That use is one of the franchises of the company, secured to them by the act of Congress, and cannot rightfully be denied them.

But Congress is asked, not only to revoke this grant, but to annul the contracts already entered into by the purchasers of the canal lands for the payment of a large amount of money, which, by the terms of the grant, are required to be applied to the construction of the canal. In these securities, also, the company have a direct pecuniary interest; and the same arguments which bear against the proposition to repeal the act of cession are equally forcible when applied to this. The character of a trust attaches to the fund, in whatever shape it may exist; and, without the consent of the company, Congress cannot interfere. No complaint has hitherto been made, either by States or settlers, founded on the increased price of such lands. The public have rather been inspired with a feeling of gratitude for the munificence of the Government in affording the aid, and it has been thought that the enhancement of the value of the lands, both public and private, by the construction of the improvement, fully counterbalanced the slight inconvenience of the increase in price. And when the Territorial Legislature pronounces this increase an "intolerable burden," the committee, though they impute no sinister views, cannot resist the conviction that some feeling other than a scrupulous regard for private rights must have prompted the declaration.

As to so much of the memorial as requests Congress to refund to the several purchasers the excess price of the even-numbered sections, the committee think it inexpedient to disturb the settled policy of the Government on that subject; and having come to the conclusion that Congress cannot rightfully interfere in respect to the other tracts, it would be manifestly unjust to the purchasers under the Territory, as well as to the public at large, who have an interest in the construction of the canal, to create a preference in favor of the purchaser under the United States, either by a reimbursement of money or a reduction of the price of the land. Nor has it been usual for the Government to refund the purchase money, or any part of it, where there has been no error, mistake, or fraud, committed in the sale. Should such an example be set, applications for similar relief would be innumerable, from every part of the country, and not all the members of Congress would be able to examine and decide upon them. The committee, therefore, prefer to leave the matter where the law has left it.

*Resolved*, That Congress ought not to interfere with the act of cession without the consent of the Milwaukie and Rock River Canal Company.

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*Resolutions of the Legislative Assembly of Wisconsin, relative to the disposition of certain lands granted by Congress, to aid in the construction of the Milwaukie and Rock River canal.*

Whereas Congress, by an act approved June fifth, eighteen hundred and thirty-eight, granted to the Territory of Wisconsin, to aid in the construction of the Milwaukie and Rock River canal, one-half of a strip of land ten miles wide, along the route of said canal, consisting of the odd-

numbered sections, and numbering about one hundred and forty thousand acres :

Whereas, by the conditions of this grant, the proceeds of said lands can be used to construct said canal, and for no other purpose ; the sections thus granted, and the even-numbered sections adjoining, making the other half of said strip, and numbering one hundred and forty thousand acres, cannot be sold for less than two dollars and fifty cents per acre ; and the Territory or future State must become liable for the proceeds of the grant, if the canal is not completed in six years from this time :

Whereas said grant was induced by the mistaken belief, that by the aid thus given the canal would be soon constructed ; that thereby the value, sale, and settlement of the public lands would be rapidly promoted ; that the entire tract along the route of the canal would be eagerly taken up at such double price ; and that a grant on these terms was ardently desired by the settlers along the canal line, and by the people of the Territory :

Whereas the Legislative Assembly has done all that prudence and justice would permit, to execute beneficially the trust reposed in her by said grant, and for that purpose has sold forty-two thousand four hundred and forty-seven acres of these lands to settlers, on a liberal credit, and has made repeated efforts, in three successive years, to borrow money on the pledge of her faith and of this grant : and

Whereas the entire sum which the Territory has been able to expend on the canal is but one thousand dollars borrowed, and thirteen thousand six hundred and four dollars and forty cents received from sales of land ; and the entire sum expended by the canal company is but a few thousand dollars :

Whereas all hopes of the construction of the canal are abandoned by its friends, and it is now clearly seen to be a work far beyond the resources of the canal company or of the Territory :

And whereas this so-called grant has been imposed upon the Territory without her consent, has greatly retarded the settlement and improvement of a large region of the finest country ; has imposed upon the early settlers of that country an intolerable burden, and has become the fruitful source of political strife and of vexatious legislation : Therefore,

*Be it resolved by the Council and House of Representatives of the Territory of Wisconsin:* 1. That all connexion of the Territory with the Milwaukie and Rock River Canal Company ought to be henceforth dissolved ; that all prosecution of the work of the canal by the Territory ought to be henceforth abandoned ; that the Territory ought not further to proceed to execute the office of trustee, imposed upon her by the act of Congress approved June five, eighteen hundred and thirty-eight.

2. That the Congress of the United States be, and is hereby, requested to repeal so much of said act of June five, eighteen hundred and thirty-eight, as directs the application of the fund, and prescribes the conditions of the grant ; and that the cession of the same land be made to the Territory, upon the terms following, viz :

That the minimum price of the even-numbered sections, reserved by Congress, be reduced to one dollar and twenty-five cents per acre.

That the odd-numbered section be made subject to the disposal of the Territory or future State of Wisconsin, for purposes of internal improvement, to be designated by the Territory, subject to the approval of Congress.



That no other conditions or restrictions be annexed to such grant, excepting that the Territory may be prohibited from selling any portion of said land at a price less than one dollar and twenty-five cents per acre.

3. That if Congress shall decline to alter the act of cession, so as to conform to the terms herein set forth, or to terms equally satisfactory, that Congress be, and is hereby, requested to repeal the act of June fifth, eighteen hundred and thirty-eight, unconditionally, and to sell and dispose of so much of the lands as shall, by such repeal, revert or be retroceded to Congress, in the same manner and upon the same terms as other public lands are sold by the Government.

That Congress be further requested to direct, by law, that the bonds, mortgages, records, and securities, pertaining to the lands sold by the Territory, be transferred to the custody of the register and receiver of the United States land office at Milwaukie; that the several purchasers of said lands, (for which the purchase money is not yet paid,) their representatives or assigns, be permitted to pay to the receiver of said land office, within a given time, to be fixed by law, the purchase money of said land, at one dollar and twenty-five cents per acre; and, upon the certificate of such payment, that the register of said land office be required to discharge and cancel the bonds and mortgages executed by said purchasers, respectively, and the records thereof; and that, in default of such payment, by any such purchaser, within the time so prescribed, the amount due on such securities, or so much thereof as to Congress shall seem equitable, shall be collected, in such manner as Congress shall by law direct; and that Congress be further requested to make such provision for the return of the excess price paid by the purchasers of the even-numbered sections at two dollars and fifty cents, or such other relief as shall seem equitable and just.

4. That copies of the foregoing preamble and resolutions be transmitted, to be presented to each House of Congress, and to our Delegate in Congress; and that said Delegate be, and is hereby, requested to introduce and urge the passage of a bill to carry these resolutions into effect.

D. NEWLAND,

*Speaker of the House of Representatives.*

JAMES COLLINS,

*President of Council.*

EXECUTIVE DEPARTMENT,

Madison, February 17, 1842.

Approved:

J. D. DOTY.

*Remonstrance of the Milwaukie and Rock River Canal Company, on the subject of the land granted by Congress, June 18, 1838, for the construction of the Milwaukie and Rock River canal.*

To the honorable Senate and House of Representatives of the Congress of the United States:

The remonstrance of the Milwaukie and Rock River Canal Company sheweth, that a memorial has been recently addressed to your honorable body, by the Legislative Assembly of Wisconsin Territory, proposing to retrocede to the United States the lands granted by act of Congress of June

18, 1838, to aid in the construction of the Milwaukie and Rock River canal.

This remonstrance further sheweth, that such retrocession, if acceded to by Congress, would be in violation of the rights of the canal company, who have made very considerable expenditures of their own means on the canal, under the full assurance of deriving aid from the proceeds of the lands so granted, and under the sanction of the act of Congress making the said grant.

This remonstrance further sheweth, that the aforesaid act of Congress, in its operation, involves the interests of, and imposes obligations upon, four distinct parties, the assent of each and every of whom would be necessary, upon grounds of equity and right, before any change of policy could be made. These parties are—

1. The United States;
2. The Territory;
3. The canal company; and
4. The purchasers of the land.

The Territory has been a passive partner, the mere recipient of the bounty of Congress, without any exertion on her own part to secure an interest in the donation, and without the expenditure of any means from her Treasury to obtain or preserve that interest, which, through other means, has been placed in her possession. The interest of the Territory, then, considered as an investment in the grant, is far less than that of either of the other parties; and it would therefore appear to your memorialists that she ought not to ask for any change of policy which would injuriously affect the interest of the other parties concerned, without their consent.

The canal company (the third party in interest, as above) made application to Congress for the above grant of land, at the session of 1837-'38, upon which the grant was made. No memorial was ever sent up from the Legislative Assembly, asking for the grant, and none of the necessary expenses in sending an agent for that purpose were ever paid by the Territory. The canal company defrayed all these expenses at their own cost, and through their exertions alone secured to the Territory all the benefits which might be supposed to flow from the grant. To this end, the Legislature had given authority to the company, in their charter, reserving all the direct advantages of the grant to the Territory and future State of Wisconsin. The company were induced, by the authority so placed in their hands, to incur the necessary expense and labor of securing the grant; not for any direct advantage which would accrue to the company from the grant itself, but for the advantage which they would derive from that source in the accomplishment of the work, for which they had not otherwise adequate means.

The act of Congress, making said grant, declares that it shall be applicable to the construction of the canal, and "for no other purpose whatever." Under this pledge of the Government, the company have unhesitatingly invested their means in the work; and they have faith to believe that Congress will not sacrifice their rights and property, so invested, by a hasty withdrawal of the pledge under which those investments have been made. We believe that the wisdom and justice of Congress will decide that the Government cannot in equity, and ought not by power, to change the terms of the grant without the assent of all parties interested.

The purchasers of the land (the fourth party in interest, as above) have rights involved which a paternal Government may not with propriety overlook. Large sales have been made, not only from the alternate sections of land set off to the canal, but also of those reserved to the Government, at double the usual price of Government lands. This enhanced price has been paid, on the strength of the pledge of the Government above quoted; and though the canal lands have been sold on a credit, yet many of the purchasers have made payment in full, while all those tracts which have been sold by the Government have been paid for in full to the Government, as in all other cases, but at double the usual price. These prices have been paid with the understanding that the price of each alternate section should be expended in public works on the grant. Can the Government, in justice, now change the conditions of the sales thus made, and apply or authorize the application of the proceeds of such sales to other purposes, without the assent of the parties who have thus invested their means?

As regards the United States, as one of the parties, and whose interests are alone in the hands of Congress, it may not be improper here to advert to the effect which such a step would carry with it. A retrocession of the lands, a withdrawal of the proceeds from the purposes for which they were pledged by the act of grant, and the consequent abandonment of all public work calculated to give an enhanced value to those lands proportional to the enhanced price, would impose on Congress the obligation to refund to the purchasers one-half of the amount which they have paid, by an appropriation from the Treasury, and reduce the price of the remainder to the usual minimum standard of Government lands. This would occasion much trouble and expense to the Government, without securing any attendant advantage. But this is not all: A considerable proportion of the sales made by the Territory are on a long credit, having several years still to run, the collections for which would devolve on the Government, and would have to be made under the laws of the Territory enacted for that purpose, by which foreclosures of mortgage must be made in every case of default, requiring court expenses, and all the train of fees and costs usually attendant on such cases, which are always made more expensive to the Government than to other parties litigant, and which would probably be such as, in the end, to leave but little nett revenue to the Government. Add to this the constant appeals from those purchasers who have actually paid double price for their lands, and the legislation which would inevitably follow for their relief, it would probably cost the Government the whole value of the lands before the business would finally be settled.

It should also be borne in mind, that the Territory has actually received a considerable sum on these lands, which it has invested in the work, which could not be reclaimed or realized by the Government by retrocession, as the work will be left in an unfinished state.

The majority in the Legislature in favor of retrocession was a very small one, and it would be improper here to make such commentaries as would show how even a small majority could be induced to advise such a step. Suffice it to say, that the causes tending to produce that majority were extraordinary, and such as, in all probability, can never again produce the same result.

Your memorialists, therefore, respectfully pray your honorable bodies to

defer any action on the said memorial, at least until another year, when a new Legislature, under the new apportionment, will be enabled more fully to express the will of the people of the Territory. And they further pray that, should Congress now or hereafter act upon the suggestion of said memorial, it will not do so precipitately, nor regardless of the interest of those who have become deeply interested, under the sanction of an act of Congress.

And, as in duty bound, your memorialists will ever pray.

BYRON KILBOURNE,

*President M. and R. R. Canal Company.*

J. A. LAPHAM, *Secretary.*

MILWAUKIE, February 23, 1842.